

HB 1195-7— Filed 02/25/2002, 10:45

Adopted 3/5/2002 Adopted 2/25/2002

Long **SENATE MOTION**

MR. PRESIDENT:

I move that Engrossed House Bill 1195 be amended to read as follows:

- 1 Page 13, between lines 10 and 11, begin a new paragraph and insert:
- 2 "SECTION 12. IC 6-3.1-13-2 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this
- 4 chapter, "credit amount" means the amount agreed to between the
- 5 board and applicant under this chapter, but not to exceed, **in the case**
- 6 **of a credit awarded for a project to create new jobs in Indiana**, the
- 7 incremental income tax withholdings attributable to the applicant's
- 8 project.
- 9 SECTION 13. IC 6-3.1-13-13 IS AMENDED TO READ AS
- 10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The board
- 11 may make credit awards under this chapter to foster job creation in
- 12 Indiana **or, as provided in section 15.5 of this chapter, job retention**
- 13 **in Indiana.**
- 14 (b) The credit shall be claimed for the taxable years specified in the
- 15 taxpayer's tax credit agreement.
- 16 SECTION 14. IC 6-3.1-13-14 IS AMENDED TO READ AS
- 17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. A person that
- 18 proposes a project to create new jobs in Indiana may apply **as provided**
- 19 **in section 15 of this chapter** to the board to enter into an agreement
- 20 for a tax credit under this chapter. **A person that proposes to retain**
- 21 **existing jobs in Indiana may apply, as provided in section 15.5 of**
- 22 **this chapter, to the board to enter into an agreement for a tax**
- 23 **credit under this chapter.** The director shall prescribe the form of the
- 24 application.
- 25 SECTION 15. IC 6-3.1-13-15 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. **This section**
- 27 **applies to an application proposing a project to create new jobs in**
- 28 **Indiana.** After receipt of an application, the board may enter into an

1 agreement with the applicant for a credit under this chapter if the board
2 determines that all of the following conditions exist:

3 (1) The applicant's project will create new jobs that were not jobs
4 previously performed by employees of the applicant in Indiana.

5 (2) The applicant's project is economically sound and will benefit
6 the people of Indiana by increasing opportunities for employment
7 **in Indiana** and strengthening the economy of Indiana.

8 ~~(3) There is at least one (1) other state that the applicant verifies~~
9 ~~is being considered for the project.~~

10 ~~(4) A significant disparity is identified, using best available data,~~
11 ~~in the projected costs for the applicant's project compared to the~~
12 ~~costs in the competing state, including the impact of the~~
13 ~~competing state's incentive programs. The competing state's~~
14 ~~incentive programs shall include state, local, private, and federal~~
15 ~~funds available.~~

16 ~~(5) (3) The political subdivisions affected by the project have~~
17 ~~committed significant local incentives with respect to the project.~~

18 ~~(6) (4) Receiving the tax credit is a major factor in the applicant's~~
19 ~~decision to go forward with the project and not receiving the tax~~
20 ~~credit will result in the applicant not creating new jobs in Indiana.~~

21 ~~(7) (5) Awarding the tax credit will result in an overall positive~~
22 ~~fiscal impact to the state, as certified by the budget agency using~~
23 ~~the best available data.~~

24 ~~(8) (6) The credit is not prohibited by section 16 of this chapter.~~

25 **SECTION 16. IC 6-3.1-13-15.5 IS ADDED TO THE INDIANA**
26 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
27 **[EFFECTIVE UPON PASSAGE]: Sec. 15.5. This section applies to**
28 **an application proposing to retain existing jobs in Indiana. After**
29 **receipt of an application, the board may enter into an agreement**
30 **with the applicant for a credit under this chapter if the board**
31 **determines that all the following conditions exist:**

32 **(1) The applicant's project will retain existing jobs performed**
33 **by the employees of the applicant in Indiana.**

34 **(2) The applicant provides evidence that there is at least one**
35 **(1) other competing site outside Indiana that is being**
36 **considered for the project or for the relocation of jobs.**

37 **(3) A disparity is identified, using the best available data, in**
38 **the projected costs for the applicant's project in Indiana**
39 **compared with the costs for the project in the competing site.**

40 **(4) The applicant is engaged in research and development,**
41 **manufacturing, or business services (as defined in the**
42 **Standard Industrial Classification Manual of the United**
43 **States Office of Management and Budget).**

44 **(5) The average compensation (including benefits) provided**
45 **to the applicant's employees during the applicant's previous**
46 **fiscal year is at least equal to the average compensation paid**
47 **during that same period to all employees in the county in**
48 **which the applicant's business is located.**

49 **(6) The applicant employs at least one hundred (100)**
50 **employees in Indiana.**

51 **(7) The applicant has prepared a plan for the use of the**
52 **credits under this chapter for:**

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(8) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(9) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(10) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

(11) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed at least one dollar (\$1) of local incentives with respect to the retention of jobs for every three dollars (\$3) in credits provided under this chapter. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

(12) The credit is not prohibited by section 16 of this chapter.

SECTION 17. IC 6-3.1-13-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. In determining the credit amount that should be awarded **to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana**, the board shall take into consideration the following factors:

(1) The economy of the county where the projected investment is to occur.

(2) The potential impact on the economy of Indiana.

~~(3) The magnitude of the cost differential between Indiana and the competing state.~~

~~(4)~~ (3) The incremental payroll attributable to the project.

~~(5)~~ (4) The capital investment attributable to the project.

~~(6)~~ (5) The amount the average wage paid by the applicant exceeds the average wage paid within the county in which the project will be located.

~~(7)~~ (6) The costs to Indiana and the affected political subdivisions with respect to the project.

~~(8)~~ (7) The financial assistance that is otherwise provided by Indiana and the affected political subdivisions.

As appropriate, the board shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. In the case of an applicant under section 15.5 of this chapter, the board shall consider the magnitude of the cost differential between the projected costs for the applicant's project

1 **in the competing site outside Indiana and the projected costs for**
 2 **the applicant's project in Indiana.**

3 SECTION 18. IC 6-3.1-13-18 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The board shall
 5 determine the amount and duration of a tax credit awarded under this
 6 chapter. The duration of the credit may not exceed ten (10) taxable
 7 years. The credit may be stated as a percentage of the incremental
 8 income tax withholdings attributable to the applicant's project and may
 9 include a fixed dollar limitation. **In the case of a credit awarded for**
 10 **a project to create new jobs in Indiana**, the credit amount may not
 11 exceed the incremental income tax withholdings. However, the credit
 12 amount claimed for a taxable year may exceed the taxpayer's state tax
 13 liability for the taxable year, in which case the excess shall be refunded
 14 to the taxpayer.

15 SECTION 19. IC 6-3.1-13-19 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. **In the case of**
 17 **a credit awarded for a project to create new jobs in Indiana**, the
 18 board shall enter into an agreement with an applicant that is awarded
 19 a credit under this chapter. The agreement must include all of the
 20 following:

21 (1) A detailed description of the project that is the subject of the
 22 agreement.

23 (2) The duration of the tax credit and the first taxable year for
 24 which the credit may be claimed.

25 (3) The credit amount that will be allowed for each taxable year.

26 (4) A requirement that the taxpayer shall maintain operations at
 27 the project location for at least two (2) times the number of years
 28 as the term of the tax credit. **A taxpayer is subject to an**
 29 **assessment under section 22 of this chapter for noncompliance**
 30 **with the requirement described in this subdivision.**

31 (5) A specific method for determining the number of new
 32 employees employed during a taxable year who are performing
 33 jobs not previously performed by an employee.

34 (6) A requirement that the taxpayer shall annually report to the
 35 board the number of new employees who are performing jobs not
 36 previously performed by an employee, the new income tax
 37 revenue withheld in connection with the new employees, and any
 38 other information the director needs to perform the director's
 39 duties under this chapter.

40 (7) A requirement that the director is authorized to verify with the
 41 appropriate state agencies the amounts reported under subdivision
 42 (6), and after doing so shall issue a certificate to the taxpayer
 43 stating that the amounts have been verified.

44 (8) A requirement that the taxpayer shall provide written
 45 notification to the director and the board not more than thirty (30)
 46 days after the taxpayer makes or receives a proposal that would
 47 transfer the taxpayer's state tax liability obligations to a successor
 48 taxpayer.

49 (9) Any other performance conditions that the board determines
 50 are appropriate.

SECTION 20. IC 6-3.1-13-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19.5. In the case of a credit awarded for a project to retain existing jobs in Indiana, the board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:**

(1) A detailed description of the business that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit. An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A requirement that the applicant shall annually report the following to the board:

(A) The number of employees who are employed in Indiana by the applicant.

(B) The compensation (including benefits) paid to the applicant's employees in Indiana.

(C) The amount of the:

(i) facility improvements;

(ii) equipment and machinery upgrades, repairs or retrofits; or

(iii) other direct business related investments, including training.

(6) A requirement that the applicant shall provide written notification to the director and the board not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.

(7) Any other performance conditions that the board determines are appropriate.

SECTION 21. IC 6-3.1-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 24. On a biennial basis, the board shall provide for an evaluation of the tax credit program, giving first priority to using the Indiana economic development council, established under IC 4-3-14-4. The evaluation shall include an assessment of the effectiveness of the program in creating new jobs and retaining existing jobs in Indiana and of the revenue impact of the program, and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each**

- 1 odd-numbered year.
- 2 Renumber all SECTIONS consecutively.
(Reference is to EHB 1195 as printed February 15, 2002.)

Senator LONG